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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1178th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations concerning the tenth to fourteenth periodic reports of India (CERD/C/49/Misc.6) (continued)

Paragraph 19

1. Mr. WOLFRUM said that the Committee should not be discriminatory in its references to regions of India. The tone of the draft concluding observations had been toughened. However, the Committee should also try to stress the positive aspects of its dialogue with representatives of the State party, such as the plurality of the mass media and their role in defending human rights.

2. The CHAIRMAN, in response to a comment made by Mr. RECHETOV, suggested that paragraph 19 should refer simply to "an increase of violence".

3. Mr SHAHI said he understood that the Committee had agreed to move the references to the National Security Act and, in Jammu and Kashmir, to the Public Safety Act from paragraph 11 to paragraph 19.

4. The CHAIRMAN suggested that a subparagraph could be inserted after paragraph 19 which would refer to the limited powers of the National Commission on Human Rights to investigate violence, followed by a new paragraph to the effect that the Committee regretted that the National Security Act and, in Jammu and Kashmir, the Public Safety Act remained in force, and that a Criminal Law Amendment Bill containing many of the provisions of the Terrorist and Disruptive Activities (Prevention) Act was in preparation.

5. Mr. CHIGOVERA pointed out that the draft concluding observations made frequent reference to Jammu and Kashmir, although in the dialogue between the Committee and representatives of India, there had been no such emphasis. The reference to Jammu and Kashmir should therefore be deleted. Also, was the Committee sure that the Criminal Law Amendment Bill contained many of the provisions of the Terrorist and Disruptive Activities (Prevention) Act? If not, that reference should also be removed.

6. Mr. DIACONU expressed concern that, if paragraph 19 referred just to Jammu and Kashmir, the Committee would come under attack for political reasons. The Committee should, therefore, use the words "in some areas of India" in paragraph 19 and throughout its draft concluding observations on India.

7. Mr. SHAHI agreed that more information on the Criminal Law Amendment Bill was needed. The draft concluding observations should refer to Jammu and Kashmir because the scale of the repression taking place rendered the situation there unlike anywhere else in the country.

8. The CHAIRMAN said that the Committee believed that it could have a positive influence on Governments. Any comments that could be construed as an attack would undermine that influence. The new paragraph might therefore read: "The Committee is concerned that the National Security Act and, in some areas of India, the Public Safety Act, remain in force and that a Criminal Law Amendment Bill currently in preparation may include certain of the provisions of the Terrorist and Disruptive Activities (Prevention) Act".

9. Mr. SHAHI said that nowhere else in India had 40,000 people been killed or were there 90,000 people missing. The Committee's attempts at an even-handed approach were misguided. The reference to one particular area was not condemnation but an expression of concern.

10. Mr. GARVALOV said that, during consideration of the report of India, the Committee had concentrated on the situation of the untouchables. However, they were referred to only once in the draft concluding observations. Moreover, if the Committee opted for a more general reference to "other areas of India", the same approach should be taken with regard to other States parties.

11. Mr. CHIGOVERA, supported by Mr. de GOUTTES, expressed concern that matters that were being put forward for inclusion in the draft concluding observations had not been taken up with the representatives of India. It would be improper to use information that had not been discussed with the State party.

12. Mr. DIACONU, supported by Mr. de GOUTTES, suggested that the Committee defer its consideration of the draft concluding observations on India and take time to look again at the records of the discussion with representatives of India and the proposed text.

13. Mr. SHAHI agreed that the Committee should defer its decision on the draft concluding observations. If it agreed that only information discussed with the representatives of India could be included, that approach would have to be applied to all States parties.

Paragraph 20

14. Mr. CHIGOVERA said that as he understood it, the courts in India could award damages to victims of human rights violations.

15. Mr. SHAHI, supported by Mr. WOLFRUM, said that under the Convention, States parties had to provide, in law, for recourse to the courts in the case of human rights violations. It should not merely be left to the discretion of the courts whether to admit a case or not.

16. Mr. RECHETOV proposed that the text should note that the Supreme Court had in some cases reaffirmed the principle of awarding compensation.

17. Mr. CHIGOVERA proposed that the paragraph should read: "Although it is noted that the Indian courts have jurisdiction to award compensation in

matters of human rights violations, including violations of the rights und the Convention, there is no specific Statute in India which provides for compensation for victims of human rights violations ...".

Paragraph 21

18. Mr. SHAHI suggested that the paragraph should include the amendment adopted earlier for paragraph 13, recommending that the National Human Rig Commission should also be allowed to consider violations by the armed forc which had occurred more than one year previously. Although the representa of India had stated that the Commission already had such powers, an offici document on the functions of that body proved otherwise.

Paragraph 24

19. Mr. CHIGOVERA pointed out that, as article 5 of the Convention did n create any rights, the word "enshrined" was inappropriate and should be replaced by "provided for".

20. Mr. van BOVEN proposed that the paragraph should become the first paragraph in the suggestions and recommendations section.

Paragraph 25

21. Mr. GARVALOV proposed that paragraph 25 should also be moved to the suggestions and recommendations section.

Paragraph 26

22. Mr. RECHETOV, in response to a point made by Mr. GARVALOV, suggested the word "entire" should be deleted and the word "reform" in the last sent be replaced by "eradicate".

23. Mr. van BOVEN said that the notion in the last sentence would be bet expressed by the existing wording.

Paragraph 27

24. Mr. WOLFRUM, supported by Mr. DIACONU, said that the paragraph shoul refer to the civil disturbances in Nagaland, as well as in Jammu and Kashm

25. Mr. SHAHI said that the paragraph was highly controversial and shoul be deleted in its entirety. The information on the recent elections give the representative of India, which was to be found in paragraph 48 of document CERD/C/SR.1162, differed greatly from the accounts given in the world's press. In addition, the South Asia Human Rights Documentation Ce had reported the extension to the entire north-east of the Armed Forces Special Powers Act which had been passed in 1956 to suppress the aspirati of the Nagas. The paragraph, if retained, would give the impression that Committee was endorsing India's statement that Jammu and Kashmir was an integral part of India.

26. Mr. DIACONU agreed that the paragraph should be deleted.

27. Mr. WOLFRUM said that he was opposed to the deletion and undertook to draft an unbiased text relating to article 5 (c) of the Convention for consideration the following day.

28. Mr. SHAHI pointed out that article 5 (c) could not be said to apply to elections in a State whose total area had been disputed since independence.

Paragraph 28

29. The CHAIRMAN suggested that the word "should" be inserted before "adopt".

Paragraph 29

30. After a brief discussion in which Mr. SHERIFIS, Mr. RECHETOV, Mr. GARVALOV and Mrs. SADIQ ALI took part, the CHAIRMAN suggested that the paragraph should read: "The Committee suggests that the State party ensure wide publicity, possibly in the most commonly spoken languages, for its tenth to fourteenth reports and the concluding observations."

Paragraph 30

31. Mr. SHERIFIS proposed that the words "at its earliest convenience" be inserted after "ratify" and that the formula be used in all concluding observations in the future.

32. Mr. YUTZIS, stressing the complementarity of the work of the Committee and that of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance, proposed that a new paragraph be inserted after paragraph 30 recommending that any visit to India by the Special Rapporteur should be used to help the Committee to gain a better understanding of the situation in that country.

Draft concluding observations concerning the fifth to seventh periodic reports of China (CERD/C/49/Misc.13)

33. Mr. WOLFRUM stressed his regret that the Committee's highly constructive and encouraging dialogue with the delegation of China had been curtailed by time constraints, leaving some questions open and hence inadequately reflected in the Committee's concluding observations.

Paragraph 1

34. Mr. RECHETOV proposed that "little data" should be replaced by "insufficient data" in the second sentence.

Paragraph 7

35. Mr. SHERIFIS suggested that, for the sake of consistency with other paragraphs under Section C, the sentence should begin: "It is noted with appreciation that ...".

36. Mr. WOLFRUM explained that the sentence was so phrased, without any word of appreciation, because very little written information had been provided on the laws in question and none at all on implementation, thus precluding any proper assessment by the Committee.

37. Mr. GARVALOV said that the information provided had been encouraging - a point he had made during the discussion - and he would have preferred some wording to that effect.

38. After an exchange of views in which Mr. SHERIFIS, Mr. DIACONU, Mr. GARVALOV and Mr. de GOUTTES took part, the CHAIRMAN said that it appeared to be preferable to retain the original wording.

Paragraph 9

39. Mr. AHMADU proposed that "lack of information" should be replaced by "absence of information".

40. In response to a question by Mr. GARVALOV, the CHAIRMAN suggested deleting the word "their" and placing an apostrophe after "minorities" in the second sentence.

41. Mr. RECHETOV said that, under the Convention, the Committee could not properly call for protective legal provisions for undefined minority groups. He suggested that the wording be amended to read: "The lack of information regarding legal status for minority groups that are scattered throughout China and their enjoyment of rights as enumerated in the Convention is noted with regret."

42. Mr. WOLFRUM pointed out that the content of paragraph 9 was based on China's report itself, which referred to a law on that issue that was under consideration but the enactment of which had been delayed.

43. The CHAIRMAN said in reply to a suggestion by Mr. AHMADU that "scattered" had been the word used in China's report. He took it that the Committee wished to retain the paragraph as it stood, subject to the minor drafting change in the second sentence.

Paragraph 11

44. Mr. YUTZIS observed that the second sentence, expressed in the conditional tense, was contradictory to the first, rendering the paragraph incomprehensible. The Committee could express concern or regret only if it had ascertained that the situation reported in the first sentence had in fact resulted in undue changes in the demographic composition of a region.

45. Mr. FERRERO COSTA, supported by Mr. YUTZIS, said that the second sentence detracted from the validity of the first. The problem, which was a substantive one, might be resolved by deleting the first part of the second sentence and continuing the first sentence, after "minority areas", with the words "which could result in any changes ...".

46. Mr. GARVALOV said he was in favour of deleting the second sentence, since the Committee could not speculate on what might happen in the future.

47. The CHAIRMAN said that the Committee had had some information to the effect that the situation had resulted in some demographic changes.

48. Mr. RECHETOV, after calling for consistency in the Committee's approach to texts of concluding observations, specifically when it came to making drafting changes in plenary, agreed that the issue raised in paragraph 11 was one of substance. Demographic changes were occurring throughout the world, and the Committee needed to take account of the impact of any such changes.

49. Mr. CHIGOVERA suggested that Mr. Ferrero Costa's amendment might be reworded slightly to read: "as this may result in changes in the demographic composition of an autonomous region".

50. Mr. SHERIFIS objected in principle to the reference to "minority areas", since they were areas within the borders of a country and the Committee's expression of concern suggested that it was encouraging segregation or ghettos. "Minority areas" should therefore be replaced by "autonomous regions".

51. Mr. DIACONU agreed that the text should refer to "autonomous regions" rather than "minority areas". He also took Mr. Rechetov's point that demographic change was not in itself a bad thing. The present wording of the paragraph would also apply to a case where a State gave doctors, teachers or engineers a financial incentive to encourage them to work in underdeveloped areas, which would actually be a commendable policy. He accordingly suggested the wording "substantial changes in demographic composition".

52. Mr. YUTZIS said that the Committee's current difficulties only showed how important it was to discuss the issues fully with the State party. The State party's representative had mentioned the question of incentives for Han settlers, but there had not been time to discuss the matter fully.

53. Mr. GARVALOV said that an influx of Han settlers into the autonomous regions would not be a problem unless there were so many of them that they usurped the functions of local government.

54. After a discussion in which Mr. WOLFRUM, Mr. GARVALOV and Mr. van BOVEN took part, the CHAIRMAN, speaking as a member of the Committee, proposed the following wording for the end of the paragraph "... as this may result in substantial changes in the demographic composition of those regions and in the character of the local society".

Paragraph 12

55. Mr. AHMADU suggested the following wording: "It is regretted that little information was provided on the distinctive religions of several minority nationalities. Concern is expressed with regard to actual enjoyment of the right to freedom of religion, particularly in the Muslim parts of Xinjiang and in Tibet. Note is taken with concern of the reported destruction by the State of mosques, Buddhist and Lama temples and other places of worship of the

minority nationalities. Deep concern is expressed for the reported restrictions placed on the exercise of religious rights of the members of the ethnic groups."

56. Mr. RECHETOV said that he personally had no objective information about any destruction of places of worship by the Chinese Government. Accordingly, he could not support the paragraph as it stood.

57. Mr. WOLFRUM (Country Rapporteur) said that he had referred to the issue and that Mr. Ahmadu's suggested wording was therefore accurate.

58. The CHAIRMAN said that it was important to retain the first phrase of the original paragraph, which explained why the Committee was concerning itself with religious matters.

59. Mr. GARVALOV said that he had objected to the inclusion of references to unproven allegations in the concluding observations. He was also doubtful about the reference to the alleged destruction of Lama temples; as he remembered the discussion, the Chinese representative had merely explained the reason behind the Government's involvement in the selection of the eleventh Panchen Lama. He suggested that the word "an" in the first sentence should be deleted to read: "... a distinctive religion is essential to the identity ...".

60. Mr. FERRERO COSTA said that the references to the alleged destruction of places of worship should be retained. Such allegations were frequently made and, as Mr. Wolfrum had said, they had been mentioned during the discussion.

61. Mr. SHERIFIS pointed out that the Committee was not competent to comment on the destruction of places of worship unless that destruction had been racially-motivated.

62. Mr. DIACONU agreed that the Committee could discuss religious freedom only in the context of racial discrimination. In the case of China, the Committee had also heard about the Government's efforts to build or repair mosques, temples and other places of worship. Supported by Mr. WOLFRUM he proposed that the second and third sentences of the paragraph should be deleted, and the end of the first sentence should read: "... and in Tibet, including the availability of places of worship and the exercise of religious rights by members of all ethnic groups".

63. Mr. SHAHI suggested the following wording: "... several minority nationalities, [the Committee] regrets that little information was provided with reference to the actual enjoyment of the right to freedom of religion, the preservation of Muslim and Buddhist places of worship and the reports of restrictions placed on the exercise of religious rights of the members of the ethnic groups". He did not wish to refer specifically to the allegations of destruction of mosques, since similar allegations had been made in respect of other countries, such as India, but not mentioned in the concluding observations.

64. Mr. de GOUTTES supported the amendment proposed by Mr. Diaconu to the first sentence. However, he did not agree that the second and third sentences should be deleted, since it was important to give examples of the practices the Committee had in mind. He accordingly suggested that the first sentence should be amended as Mr. Diaconu had proposed and that the second sentence should begin: "Note is taken in particular of the reported destruction ...", continuing with the original text and replacing "alleged restrictions" by "reported restrictions".

65. Mr. FERRERO COSTA suggested that the first sentence should be amended to read: "... including the preservation of places of worship ...", as suggested by Mr. Shahi. The second and third sentences should be retained, as Mr. de Gouttes had suggested, except that the second sentence should begin: "In this regard, note is taken ...".

66. Mr. GARVALOV said that the Committee's concluding observations should not contain references to allegations as if they were proven facts. He supported Mr. Diaconu's original amendment.

67. Mr. RECHETOV, said that he could not support the inclusion of the specific examples quoted in the paragraph because he had no objective evidence that they were true. In paragraph 25 of the draft, the Committee asked for information about the alleged destruction of places of worship: surely that was sufficient. He supported Mr. Diaconu's original amendment.

68. Mr. SHAHI, proposed that he should circulate his amendment, which was similar to Mr. Diaconu's, in writing at the next meeting to provide a basis for further discussion.

69. It was so decided.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Rwanda

70. Mr. WOLFRUM, speaking as co-ordinator of the working group on Rwanda, recalled the declaration on the situation of Rwanda adopted by the Committee at its previous session and its decision to establish a small working group. Since the revised recommendations which he had subsequently drafted had not been well received by the Committee, he was withdrawing them. The working group had met again and had taken the view that, in view of the Committee's reluctance to make any proposals that went beyond the declaration, no further action should be taken at the current session so as not to weaken the content of the declaration, which would in any case appear in the Committee's report. He would have thought that the Committee could perform a useful function in giving some guidance to the constitutional conference referred to in the third paragraph of the declaration, but in the circumstances, the Committee's action at the current session would be confined to reiterating its declaration, with

particular emphasis on the third paragraph, and its offer to be involved i
efforts to resolve the situation. Those conclusions did not prejudge any
action the Committee might wish to take - but under a different procedural
approach - to follow up the report by Mrs. Sadiq Ali.

71. Mr. GARVALOV concluded that the Committee's report of the current se
would thus reflect the fact that the Committee remained seized of its prev
concluding observations on Rwanda and that it reiterated the position
contained in its declaration.

The meeting rose at 1 p.m.